

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a back or right leg condition causally related to the accepted August 21, 2017 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 29, 2017 appellant, then a 28-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 21, 2017 she sustained injuries to her low back and right lower leg while in the performance of duty. She explained that she was guiding a resident in the bathroom who fell backward and that she caught him to prevent him from falling.<sup>4</sup>

The employing establishment controverted the claim, indicating that the incident did not occur as alleged. After initial development of the evidence, by decision dated January 4, 2018, OWCP denied appellant's claim, finding that the factual component of fact of injury had not been met. It found that the evidence was insufficient to establish that an employment incident occurred as alleged.

On January 30, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 20, 2018, OWCP's hearing representative affirmed OWCP's January 4, 2018 decision.

Appellant appealed to the Board. By decision dated April 10, 2020, the Board set aside the July 20, 2018 decision, finding that appellant had met her burden of proof to establish that the employment incident occurred as alleged. The Board found that it was undisputed that appellant was in a limited-duty status and that she worked on a ward where the residents had dementia or long-term memory loss issues. It was also undisputed that she was assigned to transport a male resident to the employing establishment's eye clinic for an examination. The Board found appellant's consistent description of the incident was sufficient to establish that it occurred at the time, place, and in the manner alleged. The Board remanded the case for a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury or condition causally related to the accepted employment incident.

The evidence of record reflects that on August 25 and 28, 2017 appellant sought urgent care treatment following the August 21, 2017 incident. In an August 25, 2017 note, Dr. Kasnif Ramzan, a Board-certified family practitioner, in a post-injury evaluation form, diagnosed leg sprain and placed her off work. In an August 28, 2017 note, Dr. Michael Tafoya, a Board-certified

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<sup>3</sup> Docket No. 19-0616 (issued April 10, 2020).

<sup>4</sup> Under OWCP file number xxxxxx356, OWCP accepted appellant's claim for a June 30, 2016 lumbar strain. Appellant returned to work in a full-time limited-duty position on July 5, 2016. Her claims have not been administratively combined by OWCP.

emergency medical practitioner, diagnosed right calf strain and right gluteal strain. He advised that appellant could work with restrictions.

In September 13 and 27, 2017 attending physician's reports (Form CA-20), Dr. Joe VonGvorachoti, a Board-certified in physical and sports medicine, reported a history of a heavy male patient falling on appellant, who was reported as being six months pregnant, on August 21, 2017. He related diagnosis of displacement of lumbar intervertebral disc, and checked a box "Yes," indicating that the diagnosed condition was causally related to the employment activity. In corresponding reports, Dr. VonGvorachoti diagnosed S1 joint inflammation and lumbar disc displacement based on the magnetic resonance imaging (MRI) scan study. He requested physical therapy and found appellant totally disabled from work until October 11, 2017.

An October 17, 2016 MRI scan of appellant's lumbar spine was submitted, which noted minimal disc bulging at L3-4 through L5-S1.

Dr. VonGvorachoti completed return-to-work forms indicating that appellant remained totally disabled on October 11 and November 10, 2017.<sup>5</sup>

In a November 8, 2017 report, Dr. VonGvorachoti noted that on September 13, 2017 appellant presented for an initial examination and evaluation from an August 21, 2017 employment-related injury, which occurred when she was moving an obese patient who fell onto her. He diagnosed displacement of lumbar intervertebral disc and inflammation of sacroiliac joint.<sup>6</sup> Dr. VonGvorachoti noted that appellant's prior work injury in June 2016<sup>7</sup> predisposed her to future back injuries and that she was pregnant, which put extra strain on her back. He indicated that a heavy patient falling on her was a potential mechanism for back injuries. Dr. VonGvorachoti opined that the August 21, 2017 work incident aggravated conditions caused by the June 30, 2016 injury as well as any new low back pain.

Dr. VonGvorachoti continued to submit progress reports and disability slips opining that appellant was totally disabled. In a January 24, 2018 narrative report, he noted that a heavy/obese male patient fell on appellant in the bathroom. Dr. VonGvorachoti indicated that the incident caused injury to her lumbar discs and repeated his assessment of lumbar disc displacement and inflammation of sacroiliac joint. He opined that appellant's back pain was causally related to her August 21, 2017 employment injury, which also exacerbated her previous employment injury of June 2016. Dr. VonGvorachoti explained that a heavy patient falling on appellant was a potential mechanism for a back injury.

OWCP also received a copy of a September 1, 2016 lumbar spine MRI scan, which indicated minimal disc bulging L3-4 through L5-S1.

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<sup>5</sup> OWCP received claims for compensation (Form CA-7) for disability for the period October 6, 2017 onward.

<sup>6</sup> A September 1, 2016 lumbar MRI scan revealed disc bulges at L3-4 and L5-S1 and electromyogram/nerve conduction velocity tests conducted on March 29, 2017 were normal.

<sup>7</sup> See *supra* note 4.

By decision dated May 20, 2020, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted August 21, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>9</sup> that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>10</sup> These are the essential elements of each and every claim, regardless of whether it is predicated upon a traumatic injury or an occupational disease.<sup>11</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established.<sup>12</sup> Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>13</sup> The second component is whether the employment incident caused a personal injury.<sup>14</sup> An employee may establish that an injury occurred in the performance of duty, as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>15</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>16</sup> A physician’s opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally,

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<sup>8</sup> *Supra* note 2.

<sup>9</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>10</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>11</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *G.D.*, Docket No. 19-0256 (issued May 20, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>12</sup> *G.B.*, Docket No. 19-0773 (issued August 19, 2019); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>13</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>14</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>15</sup> *G.B.*, *supra* note 12; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>16</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>17</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back or right leg condition causally related to the accepted August 21, 2017 employment incident.

In support of her claim, appellant submitted a series of disability notes and reports from Dr. VonGvorachoti. In his September 13 and 27, 2017 Form CA-20 reports, Dr. VonGvorachoti reported a history that on August 21, 2017 a heavy male patient fell on appellant, who was reported as being six months pregnant. He diagnosed S1 joint inflammation and lumbar disc displacement and indicated by checkmark that the diagnosed conditions were causally related to the employment incident. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.<sup>18</sup> In these reports and corresponding progress notes of the same date, Dr. VonGvorachoti failed to offer a further opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>19</sup> Thus, these reports are insufficient to establish appellant's claim.

In November 8, 2017 and January 24, 2018 reports, Dr. VonGvorachoti opined that the August 21, 2017 employment incident injured appellant's lumbar spine. He diagnosed displacement of lumbar intervertebral disc and inflammation of sacroiliac joint. Dr. VonGvorachoti also noted that appellant's prior work injury in June 2016 predisposed her to future back injuries and that she was pregnant, which placed extra strain on her back. While he opined that the August 21, 2017 work incident aggravated conditions caused by the claimed June 30, 2016 injury, Dr. VonGvorachoti did not explain how physiologically a heavy patient falling on appellant caused or aggravated her displacement of lumbar intervertebral disc and inflammation of sacroiliac joint conditions.<sup>20</sup> In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>21</sup> Additionally, Dr. VonGvorachoti's opinion that a heavy patient falling on

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<sup>17</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>18</sup> *J.S.*, Docket No. 20-0534 (issued December 31, 2020); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

<sup>19</sup> *See V.S.*, Docket No. 19-1370 (issued November 30, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *D.J.*, Docket No. 16-0663 (issued October 20, 2016).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

appellant was a “potential mechanism for back injuries” was speculative and equivocal in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>22</sup> Dr. VonGvorachoti’s reports, therefore, lack medical rationale and are insufficient to establish causal relationship.

The record also contains an August 25, 2017 report by Dr. Ramzan, who diagnosed a leg strain, and an August 28, 2017 report by Dr. Tafoya, who diagnosed right calf strain and right gluteal strain. However, neither Dr. Ramazan nor Dr. Tafoya offered an opinion regarding causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.<sup>23</sup> These reports, therefore, are insufficient to establish appellant’s claim.

The record also contains September 1 and October 17, 2016 lumbar MRI scans, which predate the August 21, 2017 employment incident. The Board has long held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment injury caused any of the diagnosed conditions.<sup>24</sup> These reports are, therefore, insufficient to establish appellant’s claim.

The Board, thus, finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions of displacement of lumbar intervertebral disc, inflammation of sacroiliac joint, leg sprain, right calf strain, and right gluteal strain were not caused or aggravated by the accepted August 21, 2017 employment incident.

On appeal appellant argues that the narrative report of November 8, 2017 from Dr. VonGvorachoti, supports that her back conditions were causally related to the accepted August 21, 2017 employment incident. For the reasons explained above, however, Dr. VonGvorachoti’s medical reports are insufficient to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a back or right leg condition causally related to the accepted August 21, 2017 employment incident.

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<sup>22</sup> *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>23</sup> *See supra* note 20.

<sup>24</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board